IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 154 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX – Applicant
Versus
PATEL DIESELS - Respondent

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Appearance :
MS MONABEN M BHATT for Applicant.
NOTICE SERVED for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 14/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

The Income-Tax Appellate Tribunal, Ahmedabad Bench “A” has referred the following question for the opinion of this Court under Section 256(1) of the Income-Tax Act, 1961 :-

> “Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the Commissioner of Income Tax (Appeals) whereby he had directed the Assessing Officer to grant registration to the firm when one of the partners was not major on the date from which the firm was brought into existence i.e. w.e.f. 15.11.1982 ?”

2. The facts emerging from the record of the case are as under :

There was a registered partnership-firm since November 1, 1978 of which the following were the partners :-

(1)Smt. Bharti G.Trivedi
(2)Smt. Harsida N.Trivedi
(3)Smt.Sharadaben K.Trivedi
(4)Smt.Hasumati B.Oza
(5)Smt. Bakula J.Oza
(6)Smt. Kanchanben S.Trivedi, and
(7)Mr.Natwarlal K.Pattani.

On November 15, 1982, Mr.Natwarlal K.Pattani and Smt. Kanchanben S.Trivedi retired from the firm; whereas the remaining five partners continued the business from November 16, 1982. As per the oral agreement, the remaining partners admitted a minor i.e. Ramesh N.Trivedi as a partner to the benefits of partnership. The date of birth of minor, who was admitted to the benefits of partnership, was December 14, 1964 and he attained majority on December 14, 1982. Therefore, on December 16, 1982, a fresh partnership-deed was executed, but, in the deed it was, inter alia, provided that the partnership should be deemed to have come into existence with effect from November 15, 1982 (the date of commencement of accounting year). The assessee submitted Form No.11 along with the partnership-deed executed on December 16, 1982 and requested the Assessing Officer to register the firm. While going through the original partnership-deed, it was noticed by the Assessing Officer that one of the partners was minor as on November 15, 1982 and was not competent to enter into any agreement. According to the Assessing Officer, as minor was a party to the

partnership-deed, the partnership-deed was void *ab initio*. In view of the said conclusion, the Assessing Officer refused to register the firm and assessed the assessee as unregistered firm.

3. Feeling aggrieved, the assessee preferred an appeal before the Commissioner of Income-Tax (Appeals). On appreciation of facts, the Appellate authority found that the minor was admitted to the benefits of partnership-firm from November 16, 1982 to December 16, 1982, which was perfectly legal and, therefore, the Assessing Officer was not justified in refusing to register the firm. Thereupon, the Revenue carried the matter before the Appellate Tribunal. The Appellate Tribunal concurred with the findings recorded by the Appellate authority, which has given rise to the instant Reference.

4. Though the respondent is duly served, it has neither appeared through its lawyer nor through its constituted agent.

5. This Court has heard Ms. Monaben M.Bhatt, learned counsel for the Revenue at length. From the

findings of facts recorded by the Appellate authority, which are confirmed by the Tribunal, it is evident that the minor was admitted to the benefits of the partnership. The record does not indicate that the minor had entered into any contract with anyone, but, because of understanding arrived at between the continuing and retiring partners, the minor was admitted to the benefits of the partnership. Section 2(23) of the Income-Tax Act, 1961 reads as under :-

> "Section 2(23): "firm", "partner" and "partnership" have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932); but the expression "partner" shall also include any person who, being a minor, has been admitted to the benefits of partnership."

From a bare reading of the above-quoted provisions, it becomes evident at once that the expression "partner" also includes any person, who, being a minor, has been admitted to the benefits of partnership. The record would indicate that minor Ramesh N.Trivedi was admitted as partner to the benefits of partnership from November 16, 1982 to December 16, 1982 and, therefore, the Assessing Officer was not justified in refusing to register the

firm under the Income-Tax Act, 1961. It is not the case of the Revenue that the finding recorded by the Appellate authority that minor Ramesh N.Trivedi was admitted to the benefits of partnership, is either perverse or contrary to the terms of the Deed and that the minor was also liable to share the losses of the firm. If that had been the case of the Revenue, the question in the present form would not have been formulated by the Tribunal and referred to this Court for its opinion. Under the circumstances, this Court is of the opinion that the Tribunal was justified in upholding finding of fact recorded by the Appellate authority to the effect that minor Ramesh N.Trivedi was admitted to the benefit of partnership and, therefore, the Assessing Officer was not justified in refusing to register the firm under the provisions of the Income-Tax Act, 1961. The net result of the above discussion is that the question referred to this Court for opinion will have to be answered in the affirmative i.e. in favour of the assessee and against the Revenue.

Accordingly, the question referred to this Court for opinion is answered in the affirmative i.e. in

favour of the assessee and against the Revenue. The Reference, accordingly, stands disposed of. There shall be no order as to costs.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)